IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION.

CRIMINAL REVISION APPLICATION No.392 of 2007

Amjad Jahangir Chabru ..Applicant.

Vs.

The State of Maharashtra ..Respondents.
And Anr.

Mr Ujwal Agandsurve,Advocate for the Applicant.

Mr K. V. Saste, APP for the Respondent-State.

CORAM: V.C. DAGA,J.

DATED: 5th September, 2007.

P.C.:-

1. Heard learned counsel appearing for the applicant and learned APP for the respondent-State of Maharashtra.

2. Perused revision petition with documents annexed thereto.

3. The applicant has invoked revisional jurisdiction of this Court to challenge the order dated 13.8.2004 passed in Sessions Case No. 319 of 2003 by the IV Ad hoc Assistant Sessions Judge,Solapur, ("the Trial Court" for short) convicting the accused-applicant for the offence punishable under Section 376 of the Indian Penal Code (for short "the I.P.C.")

to suffer R.I. for seven years and to pay a fine of Rs.3,000/-,in default to suffer S.I. for 4 months. Compensation in the sum of Rs. 3,000/- was awarded in favour of the complainant. The said order was confirmed in Criminal Appeal No. 39 of 2004 vide the order dated 19.8.2004 by the learned Sessions Judge, Solapur ("the first Appellate Court") for the reasons recorded therein.

THE FACTS:
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4. The prosecution story runs as under:-

5. That prosecutrix P Vijapure was residing with her mother and brother jointly, in the house of one Latabai Tanpure on rent. She and her mother do the labour work. Her father, Mohammad Gadubhai, has performed another marriage and he is staying at Karajgi.Her brothers are doing mechanic work. Marriage of prosecutrix was settled with one Khaja Dilawar resident of Paranda and was scheduled to be performed on 1st June, 2003.

6. Near their house, there is one Bidi Karkhana of one Abida Chabru. Hence, the son of Abida; namely, Amjad Chabru (the

accused-applicant herein)used to pass from the road of house of prosecutrix. Hence they got acquainted with each other.

7. The applicant's defence is that he had love affair with the prosecutrix and act of intercourse was regular feature between them. On 14.5.2003 and 15.5.2003 both had intercourse with consent. On 19.5.2003, in the afternoon at about 1:30 a.m. he had intercourse with the prosecutrix with her consent. However, the prosecutrix on the same day at about 10,00 to 11.00 a.m. lodged a complaint of committing rape on her by the present applicant. That is how the prosecution came to be launched and crime came to be registered and he was prosecuted.

8. The trial court convicted him and conviction is affirmed by the First Appellate Court in appeal.

9. Both the Courts below recorded their findings of fact in favour of the prosecution and convicted the applicant-accused as stated hereinabove for the offence committed under Section 376 of the I.P.C.

10. The aforesaid orders are the subject matter of challenge in this revision petition.

CONSIDERATION
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11. Having heard rival parties and having seen the material available on record, I do not see any case having been made out by the applicant to interference with the impugned order. The Trial Court has scrutinized the evidence in detail which the First Appellate Court has re-appreciated, the same is reproduced herein below:-

> "17. While re-appreciating the evidence, first it is necessary to go through the evidence of the prosecutrix-P (P.W.4), who herself is the victim of the present offence, who lodged the report as per Exh.31 and brought the law in motion and P.W.5 Shamim, who is the mother of the prosecutrix-P (PW4). So the evidence of these two witnesses is very material for unfolding the prosecution case. On going through the version of P.W.4 prosecutrix-P, we will find that she has categorically deposed that her marriage was settled and was celebrated with one khaja Mujawar r/o Paranda on 1.6.2003. The evidence of the prosecutrix P shows that she was knowing this appellant very well as there is Bidi factory of her mother. From the perusal of the version of the prosecutrix-P, it reveals that she was called by the appellant 2-3 times in the Bidy factory but she did not respond. Again she was called at the place of the construction. Even then she did not go there but subsequently the appellant had threatened her to come to the place of the construction at 7.00 to 7.30 p.m. Otherwise he will give telephonic message to the proposed husband of the

prosecutrix-P and to break her marriage. Therefore, she had apprehension of the threat given by the appellant, therefore, she had been to the place of the construction. At that time, the appellant removed her clothes and committed rape on her. Her version shows that she raised shouts and on hearing those shouts, Tayara and Babulal had come there, she told this incident to them but the appellant gave threats and committed rape on her. This is first incident. From perusal of the version of the prosecutrix-P, we will find that she has clearly testified that when she went to her home, she disclosed the facts of this incident to her mother. It is submitted on behalf of the accused that had it been the fact that such sexual intercourse was committed on the prosecutrix-P by the appellant, then in natural course either the prosecutrix-P by the appellant, then in natural course either the prosecutrix - P or her mother could have lodged the report immediately but there is no any immediate report filed by them. But on going through the version of the prosecutrix-P, we will find that she in specific words deposed that because of the fear that her marriage will be broken and her reputation will be injured in the society, she had not gone to the police station. The alleged incident took place prior to 14.5.2003. The marriage of the prosecutrix-P was to be held on 1.6.2003. If she had disclosed this fact to anybody else or lodged report certainly there was possibility of breaking down her marriage settlement as well as there was apprehension of defamation of the prosecutrix-P in the society before her marriage, it would have affected her further marital life. The explanation putforth on behalf of the prosecution-P for non filing of the report of first incident is properly explained."

"18. From the perusal of the version of the prosecutrix-P, we will find that again after one or two days when she was sleeping with her mother in the courtyard in the night time at about 1.00 a.m., the appellant had come there and had touched her and was trying to

wake her but this fact was noticed by the mother of the prosecutrix. Therefore, the appellant ran away. The prosecutrix-P has testified that as her marriage was to be celebrated, she did not take any action. Explanation putforth on behalf of the prosecutrix-P for non filing the report of the incident is justifiable."

"19. On going through the version of the prosecutrix-P we will find that again on the next day, at about 10.00 to 11.00 a.m., the appellant had come to the house of the prosecutrix-P and had threatened to the mother of the prosecutrix-P that prosecutrix-P would be defamed in the society. Not only this but the version of the prosecutrix-P shows that if these facts are disclosed to any one, then he will kill her mother. This fact clearly shows that the appellant continuously was keeping the prosecutrix-P and her mother under threat. As the marriage of the prosecutrix was to be celebrated and for that purpose, he continuously used to go to the house of the prosecutrix, she did not disclose this incident to anybody else. The reasons putforth on behalf of the prosecution are quite satisfactory and there is no any reason to throw out the version of the prosecutrix. From the perusal of the version of the prosecutrix-P, we will find that on 19-5-03, when she herself, her mother and Shabbu were rolling the Bidis in front of their house at about 1 to 1.30 p.m. the appellant was coming towards their house. After noticing arrival of the appellant Shabbu left the house and went away. So also the mother of the prosecutrix-P went to inform this fact to the mother of the appellant. Thereafter, the appellant caught hold hands of the prosecutrix-P and took her inside the house and shut down the door by putting latch from inner side. From the perusal of the version of the prosecutrix-P, we will also find that she has protested the act of the appellant but the appellant was powerful;, so her resistance was in vain and her attempt to save herself from the sexual assault became futile. From the perusal of the version of the

prosecutrix-P, it reveals that the accused was caused to fall on the ground and thereafter he committed rape against her will by inserting his penis into her vagina. Because of sexual intercourse, the prosecutrix-P had pains in her vagina. She was weeping. Then the appellant ran away. The prosecutrix-P went back to her house and narrated all these facts to her mother. Thereafter, she herself and her mother went to police station and lodged report as per Exh.31. On perusal of the first information report (Exh.31) we will find that she has clearly mentioned all these facts in her first information report. Said report came to be lodged on 19-5-03 at 4.55 p.m. It is submitted on behalf of the appellant that the first information report was filed with due deliberation and consultation and it is delayed. But in my view there is no delay at all and it is promptly lodged. The oral version of the prosecutrix-P corroborates to the first information report (Exh.31). The prosecutrix-P has proved the FIR (Exh.31)."

12. The above discussion unequivocally makes the case contrary to the case of the consent. The bangle pieces were found broken on the spot, is one of the indication that there was no consent. It is needless to mention that the act of intercourse on 19.5.2003 being without her consent the conviction cannot be said to be without any material. No fault can be found with the view taken by the Courts below.

13. The Courts below have appreciated the

evidence in detail and given detailed reasons in support of their findings. The view taken by them is a reasonable and possible view. No fault in the appreciation of evidence could be demonstrated by the learned counsel for the applicant.

14. This Court not being a Court of appeal cannot substitute its own view in exercise of revisional jurisdiction. Revisional jurisdiction is not only limited in scope but also it is discretionary. The Court interferes in the revisional jurisdiction only in exceptional cases of flagrant miscarriage of justice as held by Apex Court in the case of **State of Rajasthan v. Gurucharandas Chaddha, AIR 1979 SC 1895.**

15. In the above view of the matter, no case is made out to interfere with the impugned order. In the result, the revision application has no merit. Same is accordingly dismissed with no order as to costs.

[V.C.DAGA,J]